

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT J. LITTELL, JR. :
d/b/a VILLAGE RESTAURANT (Seller) :
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ or Period(s) :
March 1, 1968 - November 30, 1970

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 21st day of December , 19 76, she served the within

Notice of Determination by (~~certified~~) mail upon Robert J. Littell, Jr.
d/b/a Village Restaurant
(Seller) (~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Robert J. Littell, Jr.

d/b/a Village Restaurant (Seller)

Main Star Avenue

Pleasant Valley, N.Y.

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

21st day of December , 19 76

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

December 21, 1976

Robert J. Littell, Jr.
d/b/a Village Restaurant (Seller)
Main Star Avenue
Pleasant Valley, N.Y.

Dear Sir:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Frank A. Puccia
Frank Puccia

**Supervisor of Small Claims
Hearings**

Enc.

cc: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

ROBERT J. LITTELL, JR. :
d/b/a VILLAGE RESTAURANT (Seller) :

DETERMINATION

for Revision of a Determination or for Refund of :
Sales and Use Taxes under Articles 28 and 29 of :
the Tax Law for the Period March 1, 1968 - :
November 30, 1970. :

Applicant, Robert J. Littell, Jr. d/b/a Village Restaurant, Main Star Avenue, Pleasant Valley, New York, has filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1968 through November 30, 1970. A small claims hearing was held before Joseph Chyrywaty, Hearing Officer at the offices of the State Tax Commission, State Campus, Albany, New York, on June 18, 1976, at 10:45 A.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter J. Crotty, Esq., (Solomon Sies, Esq. of counsel).

ISSUE

Do 50% of the applicant's gross sales consist of taxable restaurant meals of \$1.00 or more?

FINDINGS OF FACT

1. Applicant, Robert J. Littell, Jr. d/b/a Village Restaurant, timely filed New York State and local sales and use tax returns for the period March 1, 1968 through November 30, 1970.

2. On March 15, 1971, the Sales Tax Bureau issued a Notice of Determination and Demand for payment of sales and use taxes due against applicant, Robert J. Littell, in the amount of \$1,639.81, tax and interest due. This determination was issued as the result of a review by the Sales Tax Bureau of the sales tax returns

filed by the applicant, Robert J. Littell, and holding 50% of the gross sales reported on these returns as being taxable.

3. On May 5, 1971 the applicant, Robert J. Littell, sent correspondence to the Sales Tax Bureau protesting the tax due resulting from the issuance of the Notice of Determination.

4. Applicant, Robert J. Littell, Jr., d/b/a Village Restaurant, owned and operated a "diner type" restaurant in Pleasant Valley, New York during the period March 1, 1968 through November 30, 1970. He sold the business on December 1, 1970. The diner was open daily from 6 A.M. to 8 P.M. and catered mainly to a breakfast clientele. Sales consisted of the normal breakfast meals, with sandwiches, luncheon and dinner specials being available at lunch and dinner hours. No alcoholic beverages were served. The breakfast menu indicated that no single item on the menu was in excess of \$.99, however, a combination of 2 or 3 items could have a value of \$1.00 or more.

5. Applicant, Robert J. Littell, computed taxable sales by totaling all entries of \$1.00 or more on the cash register tapes. He then entered these amounts in a sales book. He did not retain any guest checks or register tapes to support the entries in the sales book. The taxable sales as reported on his sales tax returns were approximately 15% of the gross sales reported.

6. The Sales Tax Bureau in an effort to support their determination that 50% of the applicant's gross sales were taxable, conducted a sales in progress test for the 3 days of January 10, 11 and 12, 1972. This test was conducted on the premises of the purchaser more than a year after the applicant sold the business. The result of this test revealed that 55.5% of gross sales were \$1.00 or more.

7. That upon the change of ownership on December 1, 1970, the purchaser significantly raised his prices which when subsequently reviewed by the Sales Tax Bureau reflected that 55.5% of the sales were \$1.00 ore more. During the

period March 1, 1968 through November 30, 1970, 35% of the gross sales consisted of sales of \$1.00 or more.

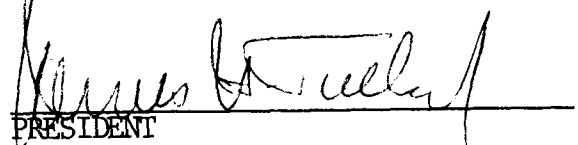
CONCLUSIONS OF LAW

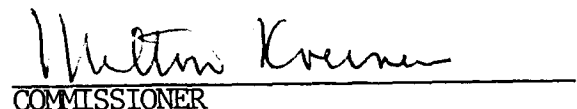
A. That the applicant, Robert J. Littell, Jr., d/b/a Village Restaurant, presented documentary and substantial evidence to prove that the sales of restaurant meals for \$1.00 or more constituted 35% of reported gross sales.

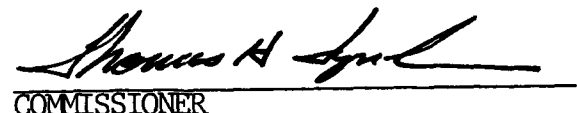
B. That the application of Robert J. Littell, Jr., d/b/a Village Restaurant is granted to the extent that additional sales tax due for the period March 1, 1968 through November 30, 1970 is reduced from \$1,391.08 to \$851.91 together with such interest as may be lawfully owing; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for payment of sales and use taxes due issued March 15, 1971, and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York
December 21, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER